Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	CC Docket No. ~~97-9~~ 0
Requests of U S West Communications, Inc.	)	CCB/CPD 97-12
for Interconnection Cost Adjustment	)	
Mechanisms	)	

REPLY COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") hereby submits its Reply Comments in the above-referenced proceeding in support of the Petition for Declaratory Ruling filed by Electric Lightwave, Inc.; McLeodUSA Communications Services, Inc.; and Nextline Communications, L.L.C. (collectively, "Petitioners").

I. INTRODUCTION

Many of the commenters agree with TCG that state commissions in US WEST's service area have appropriately conducted state arbitration proceedings to determine rates and terms for arbitrated interconnection agreements in accordance with sections 251 and 252 of the Communications Act.[1] In these state proceedings, US WEST has had ample opportunity to raise its concerns regarding the recovery of costs caused by interconnectors. Now, contrary to the procedures

1. 47 U.S.C. §§ 251-252.

set forth in section 252 of the Communications Act, US WEST is improperly attempting to over recover its costs of fulfilling its obligations to competitive local exchange carriers ("CLECs"). US WEST's ICAM petitions before the state commissions are improper as a matter of federal law, and therefore, the Commission should reject the ICAM proposal.

II. SECTION 252 OF THE COMMUNICATIONS ACT ESTABLISHES THE PROCEDURAL MECHANISMS FOR DETERMINING THE APPROPRIATE MEASURE OF COST RECOVERY

Section 252 of the Act provides for voluntary negotiations of arbitrated proceedings between incumbent local exchange carriers ("ILECs") and CLECs with regard to the fulfillment of the ILECs' responsibilities under Section 251 of the Act. Those negotiations and arbitrations afford ILECs, including US WEST, an opportunity to recover their costs of providing interconnection arrangements. US WEST has already availed itself of the procedures set forth in the Communications Act under section 252 to reach interconnection agreements with requesting carriers. Its state ICAM petitions, therefore, are improperly outside of this process, which the state commissions have capably handled and continue to oversee. ALTS appropriately summarized the effect of US WEST's efforts:

> Allowing ILECs to recover costs from CLECs outside the Section 251-252 interconnection procedures . . . would clearly frustrate the pro-competitive goals of the Communications Act by making CLEC entry decisions hostages of the state tariff process. No CLEC would be free to carry out its business

plans without fearing that ILEC tariff amounts would invalidate their basic assumptions.[2]

For these very reasons, Congress established an explicit procedure by which carriers would enter interconnection agreements to govern this essential business relationship between competitors.[3] Pursuant to the Communications Act, parties to the agreement can negotiate or have arbitrated the rates that will apply under the agreement. US WEST's state petitions, however, would "circumvent this process by creating an interconnection charge established at its sole discretion with no limit and little regulatory oversight. The charge would not be subject to negotiation, not be set through the arbitration process, and not be set subject to the Communications Act's specific cost standards."[4]

US WEST has had the opportunity in these state arbitration proceedings to recover its appropriate costs. Now, however, it is effectively ignoring these agreements and re-raising the now-familiar takings claim.[5] US WEST's effort to circumvent this process is contrary to the Communications Act and subverts the efforts of the state commissions to conduct arbitration proceedings that have yielded rates and terms consistent with section 251 and 252 of the Act. US WEST has not offered -- and cannot offer -- any credible reason to assess an

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2. ALTS at 5.

3. See Communications Resellers Association at 4-5; Worldcom at 4-5.

4. GST Telecom, Inc. at 6.

5. US WEST at 7-8.

interconnection surcharge that effectively overrides state-arbitrated agreements. Therefore, the Commission should grant this Petition for Declaratory Ruling.

III. THE FCC SHOULD DECIDE THIS ISSUE AND CAN DO SO WITHOUT ENCROACHING UPON STATE AUTHORITY

Some opponents of the Petition erroneously claim that the Commission should not decide the issue posed because only state commissions may assess the appropriateness of the ICAM surcharge.[6] TCG disagrees. The costs US WEST seeks to impose through approval of its state ICAM petitions allegedly are related to "network rearrangements" that US WEST asserts will be necessary as a result of competitors' traffic being carried on its network.[7] To the extent that these costs actually are related to the provision of interconnection, unbundled network elements, resale, or transport and termination,[8] the rates are properly addressed as part of the interconnection agreement process, which the state commissions in US WEST's territory have already been called upon to do.[9]

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6. See, e.g., Aliant Communications Co. at 2-3; Bell Atlantic and NYNEX at 2; GTE at 10-11.

7. See Petition, Exhibit A at 2.

8. See MCI at 3 (questioning the appropriateness of the costs claimed by US WEST); Sprint at 8-9.

9. In any event, US WEST can only recover costs on a competitively neutral basis. In the number portability context, which GTE cites in this proceeding (at 9), "competitively neutral" means that one service provider should not be given "an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber." Telephone Number Portability Order at ¶ 132. In addition, the mechanism "should not have a disparate effect on the

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A few commenters have suggested that the Eighth Circuit's stay of the FCC's pricing standards demonstrates that the ICAM issue is solely within the state commissions' jurisdiction,[10] but this argument is unavailing. By its ICAM petitions, US WEST seeks to impose additional costs on competitors that should otherwise be recovered through rates established under interconnection agreements. Having participated fully in the state arbitration and ratesetting processes, both prior and ongoing, US WEST improperly seeks remedies outside the appropriate procedural mechanisms through its ICAM filings. It is improper for US WEST to initiate an unrelated proceeding to seek results it has not obtained in the arbitration proceedings. Therefore, the ICAM petitions do not have to be decided based on any pricing rules or statutory pricing standards (although these support TCG's position as well); the Commission need only consider whether US WEST's state petitions go beyond the procedure clearly set forth under federal law. TCG submits that they do.

The state commissions of Arizona, Colorado, Nebraska, Oregon, Utah, and Washington have held extensive proceedings to arbitrate the open terms of interconnection agreements between US WEST and TCG; these arbitrations took place after TCG had engaged in detailed, extensive, and time-consuming

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9.(...continued)
ability of competing service providers to earn a normal return on their investment." Id. at ¶ 135. It appears that if the ICAM surcharge were assessed on CLECs, both of these principles would be violated. See also ICG Telecom Group, Inc. at 8-10.

10. See, e.g., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell at 2.

negotiations with US WEST.[11] Thus, by granting the Petitioners' request, this Commission runs no risk of interfering in state commissions' past and ongoing efforts to establish rates for interconnection, unbundled network elements, resale, and transport and termination. Clearly, state commissions have exercised and should continue to exercise the authority to determine such rates. However, it is most appropriate for this Commission to decree that any effort by a carrier to circumvent the process set forth in section 252 of the Communications Act is prohibited. Thus, the Commission should determine that US WEST has undertaken a course to recover alleged costs for interconnection that is outside of the process established in the Act. Such a determination in no way disturbs the states' role in setting rates within the appropriate procedural context.

Moreover, permitting the US WEST ICAM petitions to proceed before each of the state commissions would lead to needless additional litigation. If US WEST's state petitions were approved in any of the fourteen states in its territory, CLECs would likely return to the Commission for preemptive relief based on very similar arguments to those raised in this proceeding. Accordingly, it would be most efficient for the Commission to address this issue squarely and conclusively at this time. Additionally, if the FCC allows the ICAM petitions to be considered by each state individually, US WEST can be expected to appeal each adverse decision in federal court. Competitors would then be faced with bearing the costs

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11. Additional states have engaged in arbitration proceedings with US WEST and other new competitive entrants.

of up to fourteen additional federal suits after having fully participated in fourteen individual state proceedings. The FCC can prevent this unnecessary burden by declaring ICAM filings improper.[12]

IV. COMMENTERS CORRECTLY IDENTIFY US WEST'S ATTEMPT TO IMPEDE COMPETITION

The Commission's decision with respect to the Petition can be reached based on the plain language of the statute, as described in Parts II and III above. However, TCG believes there is an additional factor that the Commission should also consider: US WEST's continued efforts to impede competition, not only by attempting to have exorbitant, unjustified fees levied upon competitors, but also simply by filing such requests. CLECs must participate in multi-state proceedings every time US WEST initiates a proceeding that will affect CLECs' ability to compete.[13] Accordingly, the Commission should halt US WEST's latest illegitimate and anticompetitive tactic so that competitors can appropriately devote their resources and energies to providing consumer choices, innovative services, and better technologies. The Commission should not allow US WEST to deny the public the benefits of competition by gaming the regulatory process.

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12. While US WEST may appeal such a ruling by the FCC, at least the burden would be minimized by limiting the challenge to a single suit.

13. See GST Telecom at 10-11 ("Without a declaratory ruling, new entrants must intervene in and litigate and relitigate the same issues throughout US WEST's fourteen (14) state region. That needless, repetitive litigation greatly raises new entrants' costs and creates a barrier to entry.").

V. CONCLUSION

For these reasons, the Commission should grant the Petition for Declaratory Ruling and find that US WEST's Interconnection Cost Adjustment Mechanism proposal violates the Communications Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Reply Comments was sent by first-class United States mail, postage prepaid and hand-delivery, as indicated, this 28th day of April, 1997, to the following:

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